



GREATER HOUSTON PARTNERSHIP
Chamber of Commerce • Economic Development • World Trade

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November 8, 2000

Surface Transportation Board
Office of the Secretary
Case Control Unit, ATTN: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, DC 20423-0001

Dear Secretary Williams:

RE:

STB Ex Parte No. 582 (Sub-No. 1)

Major Rail Consolidation Procedures

Comments of the

Greater Houston Partnership

on

Notice of Proposed Rulemaking

An original and 25 paper copies of the comments of the Greater Houston Partnership in the above-captioned proceeding are enclosed. Also enclosed is a 3.5-inch IBM-compatible floppy diskette containing an electronic copy of the enclosed comments, in or convertible by and into WordPerfect 9.0 format.

Respectfully submitted,

Jim C. Kollaer
Greater Houston Partnership

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STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures



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The Greater Houston Partnership (the "Partnership") is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,200 member companies from virtually every industry sector throughout the eight-county Houston region. The Partnership has participated with comments in the earlier phases of this proceeding.

The Partnership is pleased that some of its recommendations are reflected in the Board's proposed Merger Policy Statement. However, the Partnership is disappointed that other of its recommendations are not addressed in the proposed rules and that those which are included do not provide any specifics that would assure their effective implementation.

The Partnership's Comments on the Advance Notice of Proposed Rulemaking submitted on May 16, 2000 ("May comments") presented the Partnership's position that the Surface Transportation Board's (STB) merger regulations should: (1) affirmatively promote the preservation of railroad competition where it exists and the creation of railroad competition

where it does not exist, (2) guarantee dependable service levels with sanctions for significant service failures, and (3) affirmatively require that any merged railroad maintain complete neutrality between ports it serves, in its service, rates, and promotions.

Preservation and Creation of Railroad Competition

In its May comments, the Partnership recommended that the STB revise its merger regulations to require merging railroads to permit competitive access to all shippers located in major terminal areas by all railroads serving the terminal area and to all shippers located within a pre-determined distance from a railroad interchange point. Further, the Partnership recommended that merging railroads maintain existing gateways and existing joint line rate levels at those gateways, subject to an annual indexing administered by the STB.

In the Proposed Rules, however, the STB did not specify the methods by which railroads must provide for enhanced competition in their merger applications. The STB did not require merging railroads to assure that shippers have access to all railroads serving an area, nor did the STB address the concept of competitive access for shippers located near interchange points. Instead, the STB stated that it considered improper for the STB to impose conditions that would represent a complete overhaul of the existing regulatory framework, such as a broad program of open access.

The Partnership believes the STB has existing authority to establish competitive terminal access and thus encourages the STB to utilize this authority. The Surface Transportation Board's indication that existing gateways will be kept open is not effective if the shipper

must obtain a transportation contract from the competing railroad simply to continue using a route that was available before the merger.

Service Failures and Sanctions

In its May comments, the Partnership recommended that the Surface Transportation Board institute severe sanctions on railroads whose service failures cause substantial financial harm to their customers, severe to the extent of granting such harmed customers immediate access to another railroad.

The STB, however, proposes simply to require the merging railroads to prepare a contingency plan for merger-related service disruptions, with no sanctions to be imposed on the merged railroad for failing to provide adequate service. More precise rules are needed in this area, specifying the sanctions the STB will impose on merged railroads whose service severely impacts shippers. These rules would be in addition to shippers' existing rights to pursue other legal remedies.

Port Neutrality

In its May comments, the Partnership recommended that all merging railroads maintain strict neutrality between ports. This neutrality would require that railroads not give routing, service, rate, or promotional preferences to one port over another and that an effective, neutral forum would adjudicate disputes between ports and railroads over this issue.

Neutral treatment of ports was not addressed by the STB in the proposed rules. This is of great concern to the Partnership, particularly in light of the numerous issues the Surface Transportation Board addressed in its various proposed changes to the Merger Policy Statement.

* * * * *

Conclusion

The Partnership recommends that the Board incorporate the following in its final merger rules:

- **In the area of competition:** The identification of specific actions merging railroads must take to enhance competition, not leaving the specifics to be determined by the railroads themselves.
- **In the area of service assurance:** The imposition of identified sanctions, such as access by a competing railroad, in the event of service failures by the merging railroads.
- **In the area of service to ports:** A clear requirement that the merged railroad maintain strict neutrality between ports and the establishment of a neutral body to adjudicate disputes.

CERTIFICATE OF SERVICE

I do hereby certify that copies of these Comments of the Greater Houston Partnership have been served on all parties of record in STB Ex Parte No. 582 (Sub-No. 1) by first-class U.S. mail.

A handwritten signature in black ink, appearing to read "David C. Finklea", is written over a horizontal line.

David C. Finklea

November 8, 2000